

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MISSOURI PRIMATE FOUNDATION,)	
et al.,)	
)	
Plaintiffs and)	
Counterclaim Defendants,)	
)	
v.)	Case No. 4:16-cv-02163
)	
PEOPLE FOR THE ETHICAL)	
TREATMENT OF ANIMALS, INC., et al.,)	
)	
Defendants and)	
Counterclaim Plaintiffs.)	

**COUNTERCLAIM PLAINTIFFS’ MOTION FOR ENTRY OF DEFAULT BY
THE CLERK AGAINST CORPORATE DEFENDANT
MISSOURI PRIMATE FOUNDATION**

Pursuant to Federal Rule of Civil Procedure 55(a), Counterclaim Plaintiffs People for the Ethical Treatment of Animals, Inc. (“PETA”) and Angela Scott (collectively, “Counterclaim Plaintiffs”) apply to the Clerk of this Court to enter a Default against corporate Counterclaim Defendant Missouri Primate Foundation (“MPF”), for failure to defend and failure to comply with the Court’s order to retain new counsel by May 1, 2018, and states:

1. On November 2, 2016, pursuant to the Endangered Species Act, Counterclaim Plaintiffs mailed to Missouri Primate Foundation (“MPF”), Connie Braun Casey, Andrew Sawyer, Jane Does 1 and 2 (collectively, “Counterclaim Defendants”), and the required government agencies a sixty-day notice of violation and intent to file suit for the unlawful “take” of chimpanzees at MPF [ECF No. 1-1]. Counterclaim Plaintiffs could not file any citizen suit on the basis of the notice before January 12, 2017.

2. Counterclaim Defendants preemptively sued Counterclaim Plaintiffs on December 30, 2016, for: (1) a declaration that they are not in violation of the ESA; (2) an injunction to enjoin Plaintiffs from filing the ESA claims outlined in their Notice; and (3) defamation for statements published on PETA's website [ECF No. 1].

3. Counterclaim Defendants' counsel, Kurtis B. Reeg, Esq., and Lynn Lehnert, Esq., entered their appearance on December 30, 2016 [ECF No. 3].

4. On February 9, 2017, Jane Doe 1 voluntarily dismissed her claims in their entirety [ECF Nos. 8-10].

5. On February 28, 2017, Counterclaim Plaintiffs moved to dismiss Counterclaim Defendants' claims [ECF Nos. 11-12], which the Court granted on September 21, 2017 [ECF No. 40].

6. Counterclaim Plaintiffs filed their counterclaims on June 23, 2017 [ECF No. 23].

7. On July 20, 2017, Counterclaim Defendants moved to dismiss Counterclaim Plaintiffs' claims [ECF Nos. 29-30], which the Court *denied* on March 22, 2018 [ECF No. 56]. Accordingly, only the Counterclaim Plaintiffs' claims remain in this cases.

8. As of January 3, 2018, corporate Counterclaim Defendant MPF was "administratively dissolved or revoked" by the Missouri Secretary of State for failure to submit its annual registration statement [ECF No. 49-1, at 5-6]. Under Missouri law, dissolution does not "[a]bate or suspend a proceeding pending by or against the corporation on the effective date of dissolution." Mo. Rev. Stat. § 351.476(2)(6).

9. On February 26, 2018, counsel for Counterclaim Defendants moved to withdraw for health reasons [ECF No. 44]. The Court granted the motion to withdraw following a hearing on March 12, 2018, and ordered that the case be stayed until May 1, 2018, and that if no counsel entered an appearance for Counterclaim Defendants by that time, “they will be deemed to be representing themselves.” [ECF Nos. 51-52].

10. As the Eighth Circuit and this Court have recognized, “the law does not allow a corporation to proceed *pro se*,” and a corporation that fails to be represented by counsel is in default. *Ackra Direct Mktg. Corp. v. Fingerhut Corp.*, 86 F.3d 852, 857 (8th Cir. 1996); *United States v. Van Stelton*, 988 F.2d 70, 70 (8th Cir.1993) (per curiam); *Kep-Co. v. Park Nat. Bank, N.A.*, No. 4:06CV747 CDP, 2008 WL 926524, at *2 (E.D. Mo. Apr. 3, 2008).

11. MPF did not comply with the Court’s order to retain new counsel by May 1, 2018, or by the filing of this Motion, and thus they cannot appear or be heard in this matter, making a Clerk’s Default proper.

WHEREFORE, Counterclaim Plaintiffs move the Clerk of this Court for entry of a default against corporate Counterclaim Defendant Missouri Primate Foundation.

Dated: May 8, 2018

Respectfully submitted,

/s/ Jared Goodman

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CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2018, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, by which notification of such filing was electronically sent and served to Geordie L. Duckler (pro hac vice admission pending), attorney for Counterclaim Defendant Andrew Sawyer, and was served by U.S. Mail to:

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/s/ Jared Goodman